

REMARKS

This amendment is in response to the Official Action dated November 2, 2006. Claims 1-9 are currently pending in connection with the present application. Claims 1, 7, 8, and 9 are independent claims. In this amendment, claim 9 has been amended. Support for the amendment is found in former claim 9 and ¶¶[0050-0055] of the Application as filed. Reconsideration and allowance is requested in view of the claim amendments and the following remarks.

Applicant thanks the Examiner for the acknowledgement of priority under 35 U.S.C. §119, and further thanks the Examiner for the acknowledgement of receipt of all the necessary priority documents.

Applicant notes that the Examiner has not objected to nor accepted the drawings filed on March 30, 2004. Absent such an indication, Applicant assumes the drawings have been accepted. However, an indication of such is earnestly solicited.

35 U.S.C. §101 Rejection

Claim 9 stands rejected under 35 U.S.C. §101. While Applicant disagrees and does not admit that the rejection is correct, Applicant submits that this rejection is now moot in view of the amendment made to claim 9. Particularly, claim 9 has been amended to prominently recite a "recording medium". This amendment was made to expedite prosecution. Accordingly, withdrawal of the rejection is respectfully requested.

35 U.S.C. §102 Rejections

Claims 1 and 5-9 have been rejected under 35 U.S.C. § 102(a) as being unpatentable over Sako et al. (U.S. PG Pub. 2003/0161233. Applicant respectfully traverses this rejection.

Applicant submits that Sako does not qualify as a reference under 35 U.S.C. §102(a). 35 U.S.C. 102(a) recites "(a) the invention was known or used by others in this country, or patented or

described in a printed publication in this or a foreign country, before **the invention thereof** by the applicant for patent.” For purposes of applying 35 U.S.C. 102(a), Applicant’s date of invention is the claimed foreign priority date of April 4, 2003. Since Applicant’s invention date of April 4, 2003 is prior to the Sako publication date of August 28, 2003, Sako does not qualify as a reference under 35 U.S.C. §102(a).

Furthermore, for the reason set forth below, Sako does not anticipate Applicant’s claims:

Independent claim 1 recites: *[a] recording device for recording first encoded data at a high bit rate and second encoded data at a lower bit rate than that of said first encoded data, both encoded data corresponding to the same material data, on an information recording medium, comprising:*

a recording step of recording said first encoded data generated in said first generation step and said second encoded data generated in said second generation step on said information recording medium in an alternate manner in terms of time; and

readout means for reading out said second encoded data recorded on said information recording medium while said recording means is recording any one of said first and second encoded data.

Sako discloses a device for cutting and reproducing recordings of data produced at a plurality of recording areas. In Figure 10, Sako illustrates a cutting device for recording data from a plurality of recording areas. A first data generator 12 records contents data 12a, originating at a first recording area (¶ 0054). A second data generator 14 records contents data 14a, originating at a second recording area (¶ 0055). A switching unit 15 selectively sends the output data from the first and second data generators, 12 and 14, to the optical modulator 17. Thereafter, optical modulator 17 records the output data from the switching unit onto a master disc 20. In Figure 11, Sako illustrates a device for reproducing the sound recorded on an optical disc 1. RF circuit 32 reads and transfers data from optical disc 1 to controller 37. Controller 37 selectively passes the recorded data to a first

decoder 35 and a second decoder 36. The first and second decoders, 35 and 36, jointly reproduce the multiple-input data recorded on optical disc 1.

Applicant submits that Sako does not teach or suggest a “*readout means for reading out said second encoded data recorded on said information recording medium while said recording means is recording any one of said first and second encoded data.*” Instead, Sako discloses a technique for sequentially recording data on an optical disc (figure 10), and thereafter a separate technique for reading data from optical disc (figure 11). Sako does not teach or suggest combining these techniques to *read data from a recording medium before completely finishing the write operation on the same recording medium.* Sako completely separates these operations, requiring a complete write operation before a read operation.

Furthermore, Sako does not teach or suggest, “*recording first encoded data at a high bit rate and second encoded data at a lower bit rate than that of said first encoded data, both encoded data corresponding to the same material data, on an information recording medium.*” As disclosed in Figure 10, Sako discloses a technique for combining two contents data (from 2 separate input terminals) onto a single optical disc (also, see Sako Abstract, and ¶¶[0054-0056]). Sako does not teach or suggest encoding data corresponding to the same material data in both a first and second bit-rate. Instead, Sako discloses recording two sets of data from completely different input terminals (elements 12a and 14a of Sako) onto the same disc (element 32 of Sako).

Sako therefore fails to disclose, teach, or suggest various features of independent claim 1. For similar reasons, independent claims 7, 8, and 9 are also neither disclosed nor suggested by Sako (although claims 1, and 7-9 should be interpreted solely based upon the limitations set forth therein). Furthermore, at least for the reason disclosed above, claims 5 and 6 also overcome Sako because they derive from independent claim 1.

Accordingly, Applicant respectfully requests that the rejection of independent claim 1 and 7-9 and dependent claims 5 and 6 under 35 U.S.C. § 102(a) be withdrawn.

35 U.S.C. §103 Rejections

Claim 2-4 have been rejected under 35 U.S.C. § 103 as being unpatentable over Sako in view of Nozaki (U.S. Patent No. 6, 937,549).

These rejections are allegedly based on 35 U.S.C. §103(a), but in fact are founded on 35 U.S.C. 103 through 35 U.S.C. 102(e). These rejections are not believed to be apt for the reasons that follow. Specifically, this application was filed on March 31, 2004 based on a priority application filed in Japan on April 4, 2003. It is assigned to Sony Corporation. The relied upon patent to Nozaki issued on August 30, 2005 (after this application was filed) based on a claimed PCT filing date of April 11, 2002, and is also assigned to Sony Corporation. Since, the present application was filed after April 11, 2002, both the present application and Nozaki were co-pending and assigned to the same assignee. Therefore, Nozaki is disqualified as prior art to form the basis of a rejection under 35 USC §103, according to 35 U.S.C. §103(c) and MPEP §706.02(l) (1).

Furthermore, as previously described Sako does not disclose, teach or suggest at least the features of “[a] recording device for recording first encoded data at a high bit rate and second encoded data at a lower bit rate than that of said first encoded data, both encoded data corresponding to the same material data, on an information recording medium, comprising: a recording step of recording said first encoded data generated in said first generation step and said second encoded data generated in said second generation step on said information recording medium in an alternate manner in terms of time; and readout means for reading out said second encoded data recorded on said information recording medium while said recording means is recording any one of said first and second encoded data,” recited in independent claim 1. Dependent claims 2-4 depend on independent claim 1 and therefore include the features of independent claim 1.

Nozaki discloses a technique that allows a user to change a name associated with a media archive after the name has been recorded on ROM media, by keeping a record of name changes

associated with a particular disc ID. Therefore, even assuming, arguendo, that Sako and Nozaki were combinable, Applicant submits that Nozaki does not cure the deficiencies of Sako with respect to at least the previously identified features of claim 1.

Therefore, Applicant respectfully requests that the rejection of claims 2-4 under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance.

A three-month extension fee is due in conjunction with this filing. Please charge our Deposit Account No. 18-0013, under Order No. SON-2966 from which the undersigned is authorized to draw.

Dated: May 2, 2007

Respectfully submitted,

By 

Ronald P. Kananen

Registration No.: 24,104

RADER, FISHMAN & GRAUER PLLC
Correspondence Customer Number: 23353
Attorney for Applicant